IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

INSURANCE APPEAL No.35 of 2003

I.C.NO.9/2002 OF THE EMPLOYEES' INSURANCE COURT, PALAKKAD.

.....

APPELLANT/OPPOSITE PARTY:-

THE REGIONAL DIRECTOR,
E.S.I. CORPORATION, PANCHADEEP BHAVAN,
ROUDN NORTH, THRISSUR-20.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT/APPLICANT:-

K.S.BASHEER,
EX-MANAGING PARTNER, THRISSUR ALUMINIUM COMPANY,
IX/609, KUNNAMKULANGARA, THRISSUR-680 007.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

Insurance Appeal No.35 of 2003

Dated, this the 21st day of March, 2007

JUDGMENT

The Regional Director of Employees' State Insurance Corporation is the appellant. Appellant issued Exhibit A1 show cause notice to the respondent informing him that since he had default payment of contribution, criminal proceedings will be initiated against him. The respondent filed I.C.No.9 of 2002 before the Employees' State Insurance Court, Palakkad challenging the liability to pay contribution. The E.I.Court after considering the evidence, held that though there were 14 persons, the materials on record shows that the employees were paid salary on 1.8.1993 and on 26.8.1993, thereby the total wages received by some of them had exceeded Rs.3,000/- and hence the establishment was decovered.

2. Learned counsel appearing for the appellant has argued that at no point of time the salary of the employees were enhanced beyond Rs.3,000/- per mensem. It is submitted that two months' salary was paid during August because of the Onam festival. It is submitted that the salary for the month of July due to the 14 employees were paid to them on 1.8.1993 and because of the Onam festival, the salary for the month of August and payable on 1.9.1993 was also paid in advance on 26.8.1993 so as to enable the employees

to celebrate their Onam festival. It is also submitted that there was no payment of salary during September 1st.

3. The reasoning given by the Tribunal is unsustainable. Merely because of a special circumstance the employer paid salary of two months on a particular month is not a ground to hold that the salary has increased more than the statutory limit. The materials on record show that the salaries of all employees were less than Rs.3,000/-. Because of the special circumstance, two months' salary was paid in one month. So, the finding of the E.I. Court that respondent's factory is not covered under the Act is illegal and unsustainable. So the order of the Court below is only to be set aside.

In the result, the appeal is allowed. The finding of the E.I.Court that the respondent's factory is not covered under the E.S.I.Act is hereby set aside. The order passed by the Insurance Court quashing Exhibit A1 is also set aside. The order passed by the appellant is restored.

K.Padmanabhan Nair
Judge

vku/-